



COMMONWEALTH OF MASSACHUSETTS

Department of Telecommunications and Cable

1000 Washington Street, Suite 820, Boston, MA 02118

(617) 305-3580

www.mass.gov/dtc

CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

JAY ASH
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

JOHN C. CHAPMAN
UNDERSECRETARY

KAREN CHARLES PETERSON
COMMISSIONER

June 23, 2015

Alan D. Mandl, Esq.
Law Office of Alan D. Mandl
90 Glezen Lane
Wayland, MA 01778

RE: CoxCom Inc. d/b/a Cox Communications, D.T.C. 09-7
Request for Extension of Confidential Treatment

Dear Attorney Mandl:

On April 17, 2015, CoxCom Inc. d/b/a Cox Communications (“Cox”) requested that the Department of Telecommunications and Cable (“Department”) extend its confidential treatment of information submitted by Cox in Docket No. D.T.C. 09-7 for periods of five (5) years from the date of expiration of the confidential treatment in that proceeding.¹ The Department, in a Hearing Officer’s Ruling, granted confidential treatment to per channel programming costs submitted in response to Information Requests 6 and 7 in D.T.C. 09-7.² The Department in its Rate Order also extended confidential treatment to amended programming cost information provided in Cox’s response to Record Request 4 in D.T.C. 09-7 under the same analysis and upon the same terms as its July Confidentiality Ruling.³ In those instances, the Department granted confidential treatment for a period of five (5) years with an opportunity for Cox to request an extension of the period based upon a showing of need for continuing protection.⁴

¹ Letter to Sara Clark, Secretary, Department of Telecommunications and Cable from Alan D. Mandl, Attorney for Cox at 1 (April 17, 2015) (“Cox Letter”).

² *Id.*; Review by the Dep’t of Telecomm. & Cable of Fed. Commc’ns Comm’n Forms 1240 and 1205 filed by CoxCom, Inc. d/b/a Cox Commc’ns New England (“Cox Rate Case”), D.T.C. 09-7, Hearing Officer’s Ruling on Motion of CoxCom, Inc. d/b/a Cox Commc’ns New England Protective Order at 6 (July 9, 2010)(“July Confidentiality Ruling”).

³ Cox Letter at 1; Cox Rate Case, D.T.C. 09-7, Rate Order at 3 (Sept. 13, 2010)(“September Confidentiality Ruling”).

⁴ July Confidentiality Ruling at 5.



All documents and data received by the Department are generally considered public records and, therefore, are to be made available for public review.⁵ G.L. c. 25C, § 5 permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review.⁶ Specifically, G.L. c. 25C, § 5 is an exemption recognized by G.L. c. 4, § 7(26)(a) (“specifically or by necessary implication exempted from disclosure by statute”). G.L. c. 25C, § 5 establishes a three-prong standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be granted confidential treatment. First, the information for which confidential treatment is sought must constitute “trade secrets, confidential, competitively sensitive, or other proprietary information.”⁷ Second, the party seeking confidential treatment must overcome the presumption that all such information is public information by “proving” the need for its non-disclosure.⁸ Third, even where a party proves such need, the Department may only grant confidential treatment to so much of that information as is necessary to meet the established need, and only for such length of time as the need for protection exists.⁹

The Department, in considering whether Cox has shown a need for continuing protection, evaluates whether the information submitted by Cox remains competitively sensitive, and if Cox would be competitively harmed if the confidential treatment expired. Cox asserts that the information that was granted confidential treatment in 2010 remains confidential, commercially sensitive information.¹⁰ Moreover, in subsequent proceedings Cox has continued to request confidential treatment of per channel programming costs, and that the Department recently approved an extension of the confidential treatment periods for such information in Docket Nos. D.T.C. 07-10 and D.T.C. 08-8.¹¹ Cox further asserts that long-term contractual relationships between Cox and its programmers require Cox to keep the information confidential, and that public disclosure of this commercially sensitive information would harm its competitive position.¹² The Department accepts Cox’s assertions and finds that per channel programming costs remain competitively sensitive, and that Cox would be competitively harmed by public disclosure of such information. The Department has consistently found this type of information to be competitively sensitive and its disclosure likely to cause competitive harm.¹³ The passage

⁵ See G.L. c. 66, § 10; G.L. c. 4, § 7(26).

⁶ *Id.*

⁷ G.L. c. 25C, § 5.

⁸ G.L. c. 66, § 10.

⁹ G.L. c. 25C, § 5.

¹⁰ Cox Letter at 1.

¹¹ *Id.* at 1-2.

¹² *Id.* at 2.

¹³ See, e.g., *Cox Rate Case*, D.T.C. 14-1, *Hearing Officer Ruling on Motion for Protective Treatment of Confidential Information* at 8-9 (Feb. 14, 2015); *Petition of Comcast Cable Commc’ns, LLC to Establish & Adjust the Basic Serv. Tier Programming, Equip., & Installation Rates for the Cmtys. in Mass. Served by Comcast Cable Commc’ns, LLC that are Subject to Rate Regulation*, D.T.C. 12-2, *Hearing Officer Ruling on Motion for Confidential Treatment* at 13 (Nov. 27, 2012); *Petition of Time Warner Cable for Review of FCC Forms 1240 & Form 1205 for the Great Barrington, North Adams, and Pittsfield Systems*, D.T.C. 11-15, *Rate Order* at 12-13 (Oct. 31, 2012); *Cox Rate Case*, D.T.C. 08-8, *Hearing Officer’s Ruling on Motion of Cox Commc’ns New England for Protective Order* at 3 (June 23, 2009); *Cox Rate Case*, D.T.C. 07-10, *Hearing Officer’s Ruling on Second Motion of Cox Commc’ns New England for Protective Order* at 5



of time has not alleviated the risk of competitive harm for which confidential treatment was granted, therefore granting an extension to the confidential treatment period is consistent with recent Department actions in Docket Nos. D.T.C. 07-10 and D.T.C. 08-8. Accordingly, the Department GRANTS Cox's request for an extension of the confidential treatment granted in its July Confidentiality Ruling and its September Confidentiality Ruling. Confidential treatment will extend for an additional period of five (5) years from the date of expiration in the Department's July Confidentiality Ruling.¹⁴

So Ordered,



Michael Scott
Hearing Officer

cc: Lindsay DeRoche, DTC
Karlen Reed, DTC

14

(May 30, 2008); *Review by the Cable Television Div. of the Dept. of Telecomms. & Energy of FCC Forms 1240 & 1205 filed by Time Warner Cable, Inc.*, C.T.V. 04-5 Phase II, *Rate Order* at 6-7 (Nov. 30, 2005). See Cox Letter at n.1 (stating that for administrative ease, Cox would accept setting the expiration date for confidential treatment of the information in the July Confidentiality Ruling and the September Confidentiality as five (5) years from the initial expiration date granted in the July Confidentiality Ruling).

